

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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APR 11 1996

In the Matter of)

Implementation of Section 302 of the
Telecommunications Act of 1996)

CS Docket No. 96-46

Open Video Systems)

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To: The Commission

**REPLY COMMENTS OF INDEPENDENT CABLE &
TELECOMMUNICATIONS ASSOCIATION**

INDEPENDENT CABLE &
TELECOMMUNICATIONS ASSOCIATION

Deborah C. Costlow
Treg Tremont
WINSTON & STRAWN
1400 L Street, N.W.
Washington, D.C. 20005
(202) 371-5700

Dated: April 11, 1996

Its Attorneys

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**REPLY COMMENTS OF INDEPENDENT CABLE &
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INTRODUCTION

The Independent Cable & Telecommunications Association ("ICTA"), by its attorneys, hereby submits its reply comments in the above-referenced proceeding.^{1/} ICTA is a national trade association representing the interests of a cross-section of companies on the cutting-edge of the telecommunications revolution leading the U.S. into the twenty-first century. Its members include private cable operators (referred to also as satellite master antenna television), shared tenant services providers, equipment manufacturers, program distributors, and property management and development companies. While ICTA operator members originally concentrated their competitive entry efforts within the video services marketplace, the last five years in particular have marked a tremendous expansion into the provision of voice and data communications services to consumers throughout the country. ICTA operator members employ a variety of telecommunications

^{1/} ICTA is the successor organization to the National Private Cable Association.

technologies, both wired and wireless, to serve primarily the residential multiple dwelling unit ("MDU") market. Thus, ICTA members primarily compete with both franchised cable operators, the dominant player in the local multichannel video programming distribution market, and incumbent local exchange carriers ("LECs"), the dominant player on the local telephone market.

DISCUSSION

In implementing Section 302 of the Telecommunications Act of 1996 ("1996 Act"), ICTA urges the Commission to ensure that non-LECs, such as private cable operators, are entitled to establish and operate an open video system ("OVS"). Section 653(a)(1) of the 1996 Act clearly provides the requisite authority for such competitive entry: "an operator of a cable system or any other person may provide video programming through an open video system." Because Congress intended to increase, not decrease the number of distribution outlets for video programming delivery direct to end users, restraints on OVS operator eligibility would only serve to undermine such intent.

Moreover, private cable operators are highly motivated to develop this new and unique type of multichannel video programming distribution ("MVPD") since it offers a mechanism for such operators to provide municipal or county-wide service under a regulatory scheme that should present fewer obstacles than those historically encountered in attempts at Title VI franchise overbuilds. In this regard, private cable operators will have an opportunity not only to compete on a much broader scale, but also to maximize economies in order that consumers receive the benefits of such expansion in terms of lower cost, quality programming. There is simply no reason not to allow private cable operators to participate as OVS operators since the more non-discriminatory platforms for the distribution of entertainment and information services that exist, the greater the diversity of voices available to the public.

In addition to adopting regulations authorizing private cable operators to become OVS operators, the Commission should also allow non-LECs such as private cable operators to distribute video programming via an OVS constructed and operated by another party. Section 653(a)(1) of the 1996 Act as set forth above explicitly contemplates such access and the overall statutory framework mandating nondiscriminatory treatment “among video programming providers with respect to carriage,” see Section 653(b)(1)(A), simply reinforces this construction. The opportunity to gain access to an OVS can only increase the competitive potential of the private cable industry as well as the OVS operator itself and can provide end users with true choice in a marketplace dominated for too long by a single video services provider. Free and open access to channel capacity advances First Amendment objectives and promotes congressional intent that vigorous competition ensue both between video programmers and between distribution outlets. Precluding private cable operators from using OVS as a distribution mechanism can only lessen the competitive impact expected from this specialized MVPD model.

Finally, to ensure sufficient opportunity for access to an OVS operated by another party, ICTA supports the imposition of public notice and enrollment period requirements upon all OVS operators. Absent such procedures, an OVS operator may be able to subvert the nondiscriminatory access directive of Congress by selective initial solicitation or retention of contractual programming arrangements essentially in perpetuity. In like fashion, the Commission should adopt strict guidelines by which to judge the just and reasonable nature of all rates, terms and conditions as offered during such enrollment periods.

CONCLUSION

The Commission should adopt regulations implementing Section 302 of the 1996 Act so as to authorize non-LECs such as private cable operators (1) to construct and operate an OVS, and (2) to distribute video programming via an OVS constructed and operated by another party. In doing so, the Commission should also establish requirements for adequate public notice and enrollment periods to ensure nondiscriminatory access, together with strict guidelines precluding unjust and unreasonably discriminatory rates, terms and conditions.

Respectfully submitted,

INDEPENDENT CABLE & TELECOMMUNICATIONS
ASSOCIATION

By: Treg Tremont
Deborah C. Costlow
Treg Tremont
WINSTON & STRAWN
1400 L Street, N.W.
Washington, D.C. 20005
(202) 371-5700

Dated: April 11, 1996

Its Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of April, 1996 a true copy of the foregoing Reply Comments of Independent Cable & Telecommunications Association was served via first-class mail, postage prepaid on the following:

Michael Hammer
WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20036
Counsel for Time Warner Cable

Howard J. Symons
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Counsel for Tele-Communications, Inc.

Donald C. Rowe, Esq.
NYNEX Corporation
1111 Westchester Avenue
White Plains, N.Y. 10604
Counsel for NYNEX Corporation

Michael S. Schooler
DOW, LOHNES & ALBERTSON
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
Counsel for Comcast Cable Communications, Inc., Adelphia Communications Corporation and Intermedia Partners, L.P.

Gary Shapiro
Consumer Electronics Manufacturers Ass'n.
Electronic Industries Association
2500 Wilson Boulevard
Arlington, VA 22201

Nicholas P. Miller
MILLER, CANFIELD, PADDOCK AND
STONE
1225 19th Street, N.W.
Suite 400
Washington, D.C. 20036
Counsel for The National League of Cities,
The United States Conference of Mayors;
The National Association of Counties; The
National Association of Telecommunications
Officers and Advisors; Montgomery County,
Maryland; The City of Los Angeles,
California; The City of Chillicothe, Ohio;
The City of Dearborn, Michigan; The City
of Dubuque, Iowa; The City of St. Louis,
Missouri; The City of Santa Clara,
California; and The City of Tallahassee,
Florida

Andrew D. Lipman
SWIDLER & BERLIN, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Counsel for MFS Communications Company,
Inc.

Marilyn Mohrman-Gillis
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for The Association of America's
Public Television Stations

Charles S. Walsh
Seth A. Davidson
FLEISCHMAN AND WALSH, L.L.P.
1400 Sixteenth Street, N.W.
Suite 600
Washington, D.C. 20036
Counsel for Motion Picture Association of
America, Inc.

Jeffrey Hops
Alliance for Community Media
Alliance for Communications
Democracy, Consumer Federation of
America, Consumer Project on
Technology, Center for Media Education,
and People for the American Way
666 11th Street, N.W., Suite 806
Washington, D.C. 20001-4542

Robert B. Jacobi
COHN AND MARKS
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036
Counsel for Golden Orange
Broadcasting Co., Inc.

Daniel L. Brenner
1724 Massachusetts Avenue, N.W.
Washington, D.C. 20036
Counsel for the National Cable Television
Association, Inc.

David Cosson
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
Counsel for National Telephone Cooperative
Association

Maureen O. Helmer
State of New York
Department of Public Service
Three Empire State Plaza
Albana, NY 12223-1350
Counsel for The New York State Department
of Public Service

Henry L. Baumann
1771 N Street, N.W.
Washington, D.C. 20036
Counsel for the National Association of
Broadcasters

Leslie A. Vial, Esq.
1250 North Court House Road
Eighth Floor
Arlington, Virginia 22201
Counsel for Bell Atlantic Telephone
Companies and Bell Atlantic Video
Services Company

Herschel L. Abbott, Jr. Esq.
Suite 4300
675 West Peachtree Street, N.E.
Atlanta, GA 30375
Counsel for Bellsouth Corporation and
Bellsouth Telecommunications, Inc.

John F. Raposa
P.O. Box 152092
Irving, TX 75015-2092
Counsel for GTE Service Corporation and
its affiliated domestic telephone operating
companies and GTE Media Ventures, Inc.

Robert A. Mazer
VINSON & ELKINS
1455 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-1008
Counsel for Lincoln Telephone and
Telegraph Company

Lucille M. Mates, Esq.
140 New Montgomery Street
Room 1522 A
San Francisco, CA 94105
Counsel for Pacific Bell

Mary Marks
One Bell Center
Room 3558
St. Louis, MO 63101
Counsel for SBC Communications, Inc., and
Southwestern Bell Telephone Company

Sondra J. Tomlinson, Esq.
1020 19th Street, N.W.
Suite 700
Washington, D.C. 20036
Counsel for U.S. WEST, INC.

John D. Seiver, Esq.
COLE, RAYWID & BRAVERMAN, L.L.P.
1919 Pennsylvania Avenue, N.W.
Suite 200
Washington, D.C. 20006
Counsel for American Cable Entertainment;
Bresnan Communications Co., Ltd.; Greater
Media, Inc.; Cable Telecommunications
Association of Georgia; Cable Telephone
Association of Maryland, Delaware and the
District of Columbia; New Jersey Cable
Telecommunications Association; Ohio Cable
Telecommunications Association; South
Carolina Cable Television Association;
Tennessee Cable Television Association; Texas
Cable & Telecommunications Association;
Wisconsin Cable Communications Association

Andrew D. Lipman, Esq.
SWIDLER & BERLIN, Chartered
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
Counsel for Residential Communications
Network, Inc.

James E. Meyers, Esq.
1555 Connecticut Avenue, N.W.,
Suite 500
Washington, D.C. 20036-1103
Counsel for the City of Olathe, Kansas

Peter Tannenwald, Esq.
IRWIN, CAMPBELL & TANNENWALD,
P.C.
1730 Rhode Island Avenue, N.W.
Suite 200
Washington, D.C. 20036-1811
Counsel for the Community Broadcasters
Association

Michael H. Hammer, Esq.
WILLKIE FARR & GALLAGHER
Three Lafayette Centre
1155 21st Street, N.W.
Suite 600
Washington, D.C. 20036
Counsel for Home Box Office

Jeffrey L. Sheldon
Sean A. Stokes
1140 Connecticut Avenue, N.W.
Suite 1140
Washington, D.C. 20036
Counsel for the UTC

Stephen R. Effros
Cable Telecommunications Association
3950 Chain Bridge Road
Fairfax, Virginia 22030-1005
Counsel for The Cable Telecommunications
Association

Howard J. Symons
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Counsel for Rainbow Programming Holdings,
Inc.

Fank W. Lloyd, Esq.
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY & POPEO
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Counsel for the Continental Cablevision, Inc.

Laura H. Phillips, Esq.
DOW, LOHNES, & ALBERTSON
A Professional Limited Liability Company
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036
Counsel for Cox Communications, Inc.

Donna N. Lampert, Esq.
MINTZ, LEVIN, COHN, FERRIS,
GLOVSKY AND POPEO, P.C.
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004
Counsel for Cablevision Systems Corporation
and The California Cable Television
Association

Norman Beecher, Esq.
3730 South Cathay Circle
Aurora, CO 80013
Counsel for GMCC

Rick Maultra
200 East Washington Street
City-County Building
Rm G-19
Indianapolis, IN 46204
Counsel for City of Indianapolis

Lawrence Fenster
MCI Telecommunications Corporation
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Counsel for MCI Telecommunications
Corporation

Thomas D. Creighton
Bernick and Lifson, P.A.
Suite 1200 The Colonnade
5500 Wayzata Boulevard
Minneapolis, Minnesota 55416
Counsel for the State of Minnesota

Sam Antar
Capital Cities/ABC, Inc.
77 West 66th Street
New York, New York 10023
Counsel for Capital Cities/ABC Inc.

Mark W. Johnson
16334 I Street, N.W.
Suite 1000
Washington, D.C. 20006
Counsel for CBS Inc.

Walter S. de la Cruz, Director
Cable Television Franchises
and Policy
11 Metrotech Center
Third Floor
Brooklyn, New York 11201
Counsel for the New York City Department
of Information Technology and Telecommu-
nications

Robert Alan Garrett
ARNOLD & PORTER
555 Twelfth Street, N.W.
Washington, D.C. 20004
Counsel for the Commissioner of Baseball

Blossom A. Peretz, Esq.
Ratepayer Advocate
State of New Jersey
Department of the Treasury
Division of Ratepayer Advocate
31 Clinton Street, 11th Floor
Newark, NJ 07101
Counsel for the Division of the Ratepayer
Advocate, State of New Jersey

Michael J. Ettner
Senior Assistant General Counsel
General Services Administration
Office of General Counsel
Washington, D.C. 20405
Counsel for General Services Administration

John A. Levin
G-31 North Office Bldg.
Commonwealth and North Streets
P.O. Box 3265
Harrisburg, PA 17105-3265
Counsel for the Pennsylvania Public Utility
Commission

Hiawatha Davis, Jr.
City Councilman and Vice Chair, Special
Projects Committee
City and County Building
Room 451
Denver, CO 80202
Counsel for City and County of Denver

Peter Arth, Jr.
Edward W. O'Neill
Mary Mack Adu
505 Van Ness Avenue
San Francisco, CA 94102
Attorney for the People of the State of
California and the Public Utilities
Commission of the State of California

Paul Rodgers
1102 ICC Building
Post Office Box 684
Washington, D.C. 20044
Counsel for National Association of
Regulatory Utility Commissioners

Jot D. Carpenter, Jr.
Telecommunications Industry Association
1201 Pennsylvania Avenue, N.W. #315
Washington, D.C. 20044-47
The Telecommunications Industry Association

Lawrence W. Secrest, III
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
Counsel for VIACOM, Inc.

Matthew Lampe
Director, Strategic Planning
City of Seattle
Department of Administrative Services
616 Second Avenue
Seattle, Washington 92104
Counsel for City of Seattle

James J. Popham
Association of Local Television Stations, Inc.
1320 19th Street, N.W.
Suite 300
Washington, D.C. 20036
Counsel for Association of Local Television
Stations, Inc.

Lawrence R. Sidman
VERNER, LIIPFERT, BERNHARD
MCIPHERSON & HAND, CHARTERED
901 - 15th Street, N.W.
Suite 700
Washington, D.C. 20005
Counsel for National Broadcasting Company,
Inc

Philip R. Hochberg,
VERNER, LIIPFERT, BERNHARD
MCIPHERSON & HAND, CHARTERED
901 - 15th Street, N.W.
Suite 700
Washington, D.C. 20005
Counsel for National Basketball Association,
National Hockey League, National Football
League

Mary Gardiner Jones
Henry Geller
901 15th Street, N.W.
Suite 230
Washington, D.C. 20005
Counsel for Alliance for Public Technology

Mark Melnick, Esq.
Group W. Satellite Communications
250 Harbor Drive
Stamford, CT 06904-2210
Counsel for Group W. Satellite Communi-
cations

Mark C. Rosenblum
Room 3245F3
295 North Maple Avenue
Basking Ridge, New Jersey 07920
Counsel for AT&T Corp.

James D. Everhart
Assistant City Attorneys
City of Dallas
1500 Marilla Room 7/D/N
Dallas, Texas 75201
Counsel for The Texas Cities

Samuel A. Simon, Esq.
901 15th Street, N.W.
Suite 230
Washington, D.C. 20005
Counsel for Access 2000

Celeste Fasone
Director
Treasury Department
Office of Cable Television
State of New Jersey
Two Gateway Center
Newark, NJ 07102

Mary McDermott
U.S. Telephone Association
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005
Counsel for the United States Telephone
Association

BY: *Treg Tremont*
Treg Tremont
WINSTON & STRAWN
1400 L Street, N.W.
Washington, D.C. 20005
(202) 371-5770